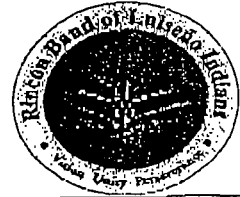


SFUND RECORDS CTR  
2204429

# Rincon Band of Luiseño Indians

PO Box 68 Valley Center, CA 92028 ♦ (760) 749-1051 ♦ Fax: (760) 749-8901



June 26, 2008

Mr. Wayne Nastri  
Regional Administrator  
U.S. EPA Region 9  
75 Hawthorne Street San Francisco, CA 94195

OPTIONAL FORM 99 (7-90)

**FAX TRANSMITTAL**

# of pages 2

To: <u>Craig Benson</u>	From: <u>Hillary Hecht</u>
Dept./Agency	Phone # <u>415 972 3700</u>
Fax #	Fax #
NSN 7540-01-317-7388	5090-101 GENERAL SERVICES ADMINISTRATION

RE: EPA's May 19<sup>th</sup> Pollution Report Concerning non-Indian owned fee land within the Rincon Reservation

The above-referenced report concerns an EPA-led CERCLA response on fee property located within the Rincon Reservation owned by a non-Indian ("The Mushroom Farm") over which the Tribe has engaged in a multi-year attempt to ensure is rid of hazardous materials that may pose a direct threat to the Tribe's Reservation environment. The Tribe consistently has attempted to work cooperatively with the land owners, who have resisted compliance with Tribal laws - which include a requirement that no-ground breaking can occur on commercial and residential rental developments until the project proponent first submits a development plan to the Tribal Council, and the Tribal Council specifically determines that the proposed development will be consistent with adjoining land uses and will not pose a threat to the public health, safety and the environment.

We therefore were shocked to review the above-referenced memorandum in which the EPA cites with authority a claim allegedly made by BIA front-line technical staff that San Diego County - not the Tribe - has jurisdiction over the activities at issue on the subject land. While we will address this matter with the BIA separately, please be advised of two important points. First, when inquiring about the Tribe's jurisdiction, the EPA's longstanding consultation policy dictates that such questions be raised by the EPA directly to the Tribe. Second, the BIA assertion, parroted by the EPA in its May 19<sup>th</sup> memo, simply is wrong when viewed against the rich federal case law on this important point. We fail to see how the EPA believes it somehow can justifiably rely on legal advice provided by a BIA environmental technician.

Second, the Tribe is deeply troubled by the assertion in the May 19 Memo that Tribal Administrators were consulted by the Author and allegedly reported that the Tribe has not "perfected" codes that would allow the Tribe to confront the monumental toxic mess present at the Mushroom Farm. As set forth above, the Tribe has laws that directly apply to the contemplated activity at the site. We will give the Author the benefit of the doubt and assume there was a fundamental lack of communication on this very important issue. However, we cannot allow that statement to stand - it is an incorrect statement of the law and it is extremely harmful to Rincon and all other tribes in this Region for this sweeping statement to remain in a publically-accessible document.

The Tribe feels strongly that 1) the EPA inexcusably relied upon a sweeping statement from a non-lawyer concerning one of the most complicated areas of federal Indian law to justify its implied conclusion that the Tribe has no jurisdiction over the subject property; and, 2) that there are applicable Tribal laws which the owner

Vernon Wright  
Chairman

Bo Mazzetti  
Vice-Chairman

Stephanie Spencer  
Council Member

Gilbert Parada  
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must comply with. We further believe that compliance with Tribal law should be included as a condition of the voluntary cleanup.

We note that CERCLA - the statute offered by the EPA in its May 19 Memo as its response authority - specifically includes tribes as Natural Resource Trustees, who, under the statute, are to be intimately involved, as stake holders, in the remediation and clean-up plan. To date, however, the Tribe has received little if any information concerning the Mushroom Farm cleanup plan. Under CERCLA, Natural Resource Trustees, such as Rincon, must be a part of the process instead of being marginalized - as appears to be the case here.

Please understand that the Tribal Council views the Mushroom Farm as a significant governmental issue facing the Tribe. As each day passes, the owner attempts to break ground on the property - no doubt viewing the May 19 EPA Memo as federal confirmation of his longstanding belief that the Tribe does not have jurisdiction over his land use and environmental activities on the subject property and he thus has no duty to comply with Tribal law. Instead of acting as a federal agency with perhaps one of the strongest Tribal consultation policies of any federal agency, the EPA is instead issuing memos, without consultation with the affected Tribe, that undermines Tribal sovereignty, directly conflicts with federal case law, directly conflicts with prior EPA positions - in court and before Congress - concerning Tribal jurisdiction and the need for tribes to have comprehensive regulatory authority over water quality and environmental protection on "checkerboard" reservations.

We trust that we can engage in meaningful, and expedited, consultations to get our federal-tribal partnership back on track through crafting a cleanup plan that acknowledges Tribal jurisdiction, mandates compliance with applicable Tribal law, and ensures ongoing consultation between EPA and the Tribe concerning this important cleanup activity.

This matter is extraordinarily time sensitive, as the owner of the subject property appears to be on the cusp of benefiting from a EPA voluntary cleanup plan that entirely cuts the Tribe out of the process. We respectfully request a meeting with you as soon as possible. We will adjust our schedules accordingly to accommodate the earliest meeting time you have available.

Respectfully,

*B. Mazzetti*  
Bo Mazzetti  
Vice Chairman  
Rincon Tribal Council

DATE 27 JUN 08	
ACTION (✓)	COPIED (✓)
RA	✓ RA
DRA	✓ DRA
AIR	AIR
CED	X CED
MTS	MTS
OPA	OPA
ORC	ORC
# FUND	# FUND
SCFO	SCFO
X WASTE	WASTE
WATER	WATER

*CED rec'd  
7/7/08*

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